

November 1, 2004

Public Comment on Final Report  
Interagency Ocean Policy Group  
White House Council on Environmental Quality  
722 Jackson Place, NW  
Washington, DC 20503

Dear Sirs/Mesdames:

I am writing on behalf of the Marine Fish Conservation Network (Network) to provide you with comments on the Final Report of the U.S. Commission on Ocean Policy and to propose legislative language to facilitate implementation of some of the Commission's proposals. Once again, we would like to commend the Commission on many of its progressive recommendations for ocean management reform and underscore the Commission's acknowledgement that major fishery problems are a function of poor governance.

### **Comments on the USCOP Final Report**

In addition to the comments previously submitted by the Network, there are several additional issues we would like to highlight relative to the changes made in the Final Draft. We appreciate the Commission's commitment to expanding and improving programs aimed at reducing the amount of wasteful bycatch and minimizing the adverse effects on endangered species. We also commend the Commission for its attempts to broaden stakeholder participation in cooperative research programs by including tribal fishing interests. Nevertheless, we are concerned that the wording in the Final Report undermines the goal of separating scientific determinations from allocations decisions.

Indeed, one of the most fundamental recommendations made by the Commission was in regards to the Regional Fishery Management Council decision-making process. Advocating the separation of scientific determinations from allocation decisions, the Preliminary Report recommended that "Scientific and Statistical Committees (SSCs) *should be required to supply* Regional Fishery Management Councils (RFMCs) with the scientific information necessary to make fishery management decisions." (*emphasis added*) In other words, the Councils have a mandatory duty to base their allocation decisions on the scientific determinations made by the SSCs. The Final Report, on the other hand, removes the qualifier "be required" and recommends only that the "Scientific and Statistical Committees (SSCs) *should supply* Regional Fishery Management Councils with the scientific advice necessary to make fishery management decisions." (*emphasis added*) This wording shift amounts to a watering down of the

Commission's original recommendation and implies that the Council's duty to separate scientific and management decisions is more discretionary than mandatory. As we noted in our earlier comments, requiring that Council decision-making separate conservation from allocation ensures that scientific determinations are insulated from political pressures and based on the best available science.

Similarly, the Preliminary Report recommended that "[e]ach Regional Fishery Management Council *should be required to set* harvest limits at or below the allowable biological catch determined by its Scientific and Statistical Committee." As with the preceding recommendation, the Final Report removes the language "be required" and recommends instead that "[e]ach Regional Fishery Management Council (RFMC) *should set* harvest limits at or below the allowable biological catch determined by its Scientific and Statistical Committee." Again, this language implies that the Councils, rather than being obligated to set harvest levels within a certain scientifically-based range, have some degree of discretion and are not legally required to follow the advice of the SSCs. History has shown that political pressures combined with economic interests create perverse incentives for Councils to increase quotas to unsustainably high levels contrary to scientific recommendations. To maintain healthy fish populations, it is crucial that Councils be legally required to establish harvest limits based on the scientific determinations made by the SSCs and not their own political and economic interests.

## **Recommendations for Implementation**

While we maintain that there are several areas of the U.S. Commission's report that require strengthening, we are very pleased with the general direction of the report. As such, we believe that it is critical that Congress take immediate and meaningful action to ensure that the Commission's recommendations are memorialized into law. Towards that end, we offer recommendations to guide the implementation of several key measures contained in the Commission report. Some of the issues identified by the Network as legislative priorities include: (1) requiring scientific determinations be separated from allocation decisions; (2) requiring regional fishery management councils to set harvest limits at or below limits recommended by independent scientists; (3) ensuring that Councils reflect a broad range of interests, including the public; (4) shifting management from a species by species approach to a multi-species approach and ultimately an ecosystem-based approach; and (5) outlining national guidelines to mitigate potential problems of "dedicated access privileges," such as individual fishing quotas, community quotas, cooperatives, and territorial or area access programs.

### **1. Fishery management councils must separate scientifically-based conservation determinations from allocation decisions.**

Following the release of the Commission's preliminary draft earlier this year, Congressman Rahall (D-WV) introduced a bill (HR 4706) to amend the Magnuson-Stevens Fishery Conservation and Management Act entitled "Fisheries Management and Reform Act of 2004." Despite widespread support, it is unlikely that the bill will be passed during the 108<sup>th</sup> Congress. Nevertheless, the bill, which requires that the Secretary of Commerce make decisions about ecologically safe levels of exploitation and habitat protection measures based on

recommendations from independent regional science and technical teams, provides an excellent guide for future legislative action. (see Attachment A)

**2. Fishery management councils must set harvest limits at or below limits recommended by independent scientists.**

Consistent with the recommendations of the Commission, the Fisheries Management and Reform Act of 2004 proposes to limit the regional fishery management councils to allocating the catch and other conservation measures provided by the Secretary among user groups. The bill permits councils to modify conservation and management measures to provide greater conservation than those set by the Secretary. (see Attachment A)

**3. Fishery management councils must reflect a broad range of interests including the public.**

Current law requires that the Secretary of Commerce ensure a fair and balanced apportionment of the representatives of the commercial and recreational fisheries under the jurisdiction of the council. Since 1985, this requirement has resulted in 80 – 90% of appointed council members representing fishing interests. There should be equal representation between commercial fishermen, recreational fishermen, and the public on the councils.

To address this problem, the Fisheries Management and Reform Act of 2004 proposes to amend the Magnuson-Stevens Act to require that governors nominate representatives of the public to serve on councils and consult with the representatives of conservation groups, when developing candidate lists for the councils. It also requires the Secretary of Commerce to ensure balanced representation between representatives of the public that do not derive any income from fishing, representatives of commercial fishing, and representatives of recreational fishing, when making council appointments. (see Attachment A)

**4. Fisheries management must shift from a species by species approach to a multi-species approach and ultimately an ecosystem-based approach.**

Poorly managed fishing activities can negatively alter the structure, dynamics and composition of marine ecosystems. Such fundamental changes can compromise the resiliency and decrease levels of biodiversity and productivity within the ecosystem. Under existing law, fishery managers have limited authority to consider ecosystem interactions, including predator-prey relationships, in management plans. The principal reason ecosystem relationships are not being adequately considered is that no guidance is being given to fishery managers regarding the type of data, principles and policies that they should consider when confronting this issue. Although the Commission report acknowledged the importance of shifting from a species-by-species approach to a more holistic ecosystem-based management approach, its recommendations lack the level of specificity necessary to effectively implement this approach.

As such, the Network has been actively collaborating with various members of Congress to develop legislation to institutionalize the principles of ecosystem-based management. The Network has identified several necessary actions to aid with implementation. These actions

include: (1) redefining the principle objective of American marine fishery policy to protect marine ecosystems; (2) establishing an explicit statutory priority between this and other (socio-economic) objectives; (3) implementing ecosystem-based fishery management; and (4) developing specific, measurable criteria and indicators for the health and integrity of marine ecosystems. The proposed legislative language contained in Attachment B would carry out these actions.

**5. National guidelines to mitigate potential problems associated with dedicated access privileges such as individual fishing quotas, community quotas, cooperatives, and territorial or area access programs must be adopted by Congress.**

The Commission report, which advocates establishing national standards for dedicated access privileges such as individual fishing quota programs, sets forth a series of general recommendations. Among other things, the Commission recommends that national guidelines require that dedicated access programs: (1) specify the biological, social, and economic goals of the plan; recipient groups designated for the initial quota shares; and data collection protocols; (2) provide for periodic reviews of the plan to determine progress in meeting goals; (3) assign quota shares for a limited period of time to reduce confusion concerning public ownership of living marine resources, allow managers flexibility to manage fisheries adaptively, and provide stability to fishermen for investment decisions; (4) mandate fees for exclusive access based on a percentage of quota shares held and use fees to support ecosystem-based management; (5) include measures, such as community-based quota shares or quota share ownership caps, to lessen the potential harm to fishing communities during the transition to dedicated access privileges; and (6) hold a referendum among all permitted commercial fishermen after adequate public discussion and close consultation with all affected stakeholders, to ensure acceptance of a dedicated access plan prior to final Regional Fishery Management Council approval.

These recommendations echo more generally the provisions put forth by the "Fishing Quota Standards Act of 2003," (H.R. 2621) introduced by Representatives Allen (D-ME), Delahunt (D-MA) and Simmons (R-CT) in June 2003. The bill, which includes a complete set of national standards for individual fishing quota programs, provides an excellent legislative template to guide the implementation of the Commission's recommendations concerning the need for national standards for dedicated access privileges. (See Attachment C)

The cornerstone of the Fishing Quota Standards Act of 2003 is the requirement that dedicated access privileges provide additional conservation benefits and minimize potential adverse impacts to fishermen and fishing communities. To ensure this, IFQ programs and shareholders must be reviewed every seven years and decisions to renew the system or quota shares or how to improve them, must be based upon the outcome of those reviews. Moreover, decisions to renew or modify IFQ programs or shares must be based on evaluations of whether the system or shareholder is providing additional and substantial conservation benefits. Additional and substantial conservation benefits are scientifically measurable improvements in avoiding bycatch, preventing high-grading, reducing overfishing, rebuilding overfished stocks, and protecting essential fish habitat. In sum, these standards are intended to ensure that IFQ programs enhance conservation while protecting fishermen and fishing communities. Similarly, the Commission report recommends that dedicated access programs include measures to mitigate

the impact on fishing communities. It does not however identify achieving conservation benefits as a priority objective.

The Commission also recommends that dedicated access programs should only “assign quota shares for a limited period of time to reduce confusion regarding public ownership of living marine resources.” This echoes H.R. 2621 which retains current law stating that IFQ programs are not compensable property rights and are therefore revocable. The bill also strengthens this principle by limiting IFQ programs and shares to a period not to exceed seven years, after which time they may be renewed subject to satisfying defined criteria. Indeed, having a limited duration for IFQ programs and shares will reinforce the fact that IFQs are not private property.

Consistent with the Commission’s concern that national guidelines should mitigate “potential harm to fishing communities during the transition to dedicated access privileges,” H.R. 2621 aims to ensure that IFQ fisheries have broad participation and requires there be a limit on the number of shares any one person may control. In initial allocations preference is given to fishermen who are engaged in fishing and have long-term participation in the fishery. An IFQ program must set aside a portion of each annual allocation for new entrants. Finally, decisions regarding whether to develop or approve an IFQ program must be approved by a two-thirds majority of the fishermen in the fishery, to prevent the consolidation of quota shares into the hands of a few.

We appreciate your consideration and look forward to working with you further on these issues. Please feel free to contact me at (202) 543-5509 should you have any questions or if you require clarification on any of these comments or implementation recommendations.

Sincerely,

Lee R. Crockett  
Executive Director

Attachments

**ATTACHMENT A: Fisheries Management Reform Act of 2004** (excerpted in relevant part)

**SEC. 2. AMENDMENT REFERENCES.**

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to such section or other provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

**SEC. 3. REPRESENTATION OF THE PUBLIC INTEREST ON REGIONAL FISHERY MANAGEMENT COUNCILS.**

(a) Appointment of Members by Administrator-

(1) APPOINTMENT OF MEMBERS- Section 302 (16 U.S.C. 1852) is amended--

(A) by striking 'appointed by the Secretary' each place it appears and inserting 'appointed by the Administrator of the National Oceanic and Atmospheric Administration';

(B) in paragraphs (2) and (6) of subsection (b) by striking 'The Secretary' each place it appears and inserting 'The Administrator of the National Oceanic and Atmospheric Administration';

(C) in paragraph (5)(A) of subsection (b) by striking 'The Secretary' the first and second places it appears and inserting 'The Administrator of the National Oceanic and Atmospheric Administration';

(D) in subsection (b) by striking 'the Secretary' each place it appears, other than in paragraph (6)(B), and inserting 'the Administrator'; and

(E) in subsection (b)(2)(B)(iii) by striking 'the Secretary's' and inserting 'the Administrator's'.

(2) APPLICATION WITH RESPECT TO CURRENT MEMBERS OF COUNCILS-

(A) APPOINTMENT NOT AFFECTED- The amendment made by paragraph (1)(A) shall not affect any appointment by the Secretary of Commerce made before the date of the enactment of this Act.

(B) REMOVAL- In applying section 302(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by this subsection, to a member of a Regional Fishery Management Council appointed before the date of the enactment of this Act, 'by the Secretary' shall be substituted for 'by the Administrator'.

(b) Representation by State Officials- Section 302(b)(1)(A) (16 U.S.C. 1852(b)(1)(A)) is amended by adding at the end the following: 'Such official shall represent the interests of the general public.'.

(c) Allocation of Appointments- Section 302(b)(2)(B) (16 U.S.C. 1852(b)(2)(B)) is amended in the first sentence--

(1) by striking 'of the active participants' and inserting 'among the active participants'; and

(2) by inserting before the period the following: 'and representatives of the public interest in marine fish conservation, including individuals who do not derive any of their annual income from commercial or recreational fishing and who are knowledgeable regarding the conservation and management of the fishery resources of the geographic area concerned'.

(d) Consultation by States in Submitting Nominees- Section 302(b)(2)(C) (16 U.S.C. 1852(b)(2)(C)) is amended--

- (1) in the second sentence by inserting 'and representatives of conservation organizations' after 'commercial and recreational fishing interests'; and
- (2) by striking the third sentence and inserting the following: 'Each list shall consist of a broad slate of candidates for each vacancy, shall include at least two representatives from each of the commercial fishing industry sector, the recreational fishing sector, and the marine fish conservation public interest sector who do not derive any of their annual income from commercial or recreational fishing, and shall consist solely of individuals who are knowledgeable regarding the conservation and management of the fishery resources of the geographic area concerned.'

(e) Training of Appointed Members-

(1) TRAINING REQUIREMENT- Section 302(b) (16 U.S.C. 1852(b)) is amended by adding at the end the following:

    (7) TRAINING OF APPOINTED MEMBERS-

        (A) IN GENERAL- The Secretary shall provide to each member of a Council appointed by the Secretary under this subsection, by not later than 6 months after the date of the member's appointment, training in matters relating to the functions of the Council, including--

            (i) fishery science and basic fish stock assessment;

            (ii) social science and fishery economics;

            (iii) the requirements of this Act, the National Environmental Policy Act of 1969, chapter 5 of title 5, United States Code (popularly known as the Administrative Procedures Act), and other relevant statutes or regulations;

            (iv) conflict of interest policies that apply to Council members; and

            (v) the public process for developing fishery management plans.

        (B) RESTRICTION ON VOTING- A member of a Council to whom the Secretary is required to provide training under this paragraph may not vote on any decision of the Council before the date the member completes such training.'

(2) LIMITATION ON APPLICATION- The amendment made by paragraph (1) shall not apply to a member of a Regional Fishery Management Council appointed before the date of the enactment of this Act.

(f) Technical Correction- Section 302(b)(2)(B) (16 U.S.C. 1852(b)(2)(B)) is amended in the second sentence by striking 'Merchant Marine and Fisheries' and inserting 'Resources'.

#### **SEC. 4. QUALIFICATION OF VOTING COUNCIL MEMBERS; DISCLOSURE OF FINANCIAL INTEREST AND RECUSAL.**

(a) Qualifications of Voting Council Members- Section 302(b)(2)(A) (16 U.S.C. 1852(b)(2)(A)) is amended by--

    (1) inserting after 'geographical area concerned' the following: ', and must not have been found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307(1)(D), (E), (F), (H), (I), or (L) or section 307(2)'; and

    (2) striking 'of the Fishery Conservation Amendments of 1990' and replacing with 'of the Fisheries Management Reform Act of 2004'.

(b) Disclosure of Financial Interest and Recusal-

    (1) AMENDMENTS RELATING TO DISCLOSURE AND RECUSAL- Section 302(j) (16 U.S.C. 1852(j)) is amended as follows:

        (A) By striking the heading and inserting 'Disclosure of Financial Interest and Recusal- '.

(B) By striking paragraph (6), and redesignating paragraphs (7) and (8) in order as paragraphs (6) and (7).

(C) In paragraph (6), as so redesignated, by striking so much as precedes subparagraph (B) and inserting the following:

`(6) PROHIBITION ON PARTICIPATION- (A)(i) An affected individual shall not vote on a Council decision that would have an effect on a financial interest that the individual is required to disclose under paragraph (2).

`(ii) An affected individual who is prohibited from voting on a Council decision may not participate in any Council deliberations relating to the decision.'.

(D) In paragraph (6)(B), as so redesignated--

(i) by inserting `or a member of the public' after `an affected individual'; and

(ii) by striking `would have a significant and predictable effect on a financial interest' and inserting `would have an effect on the financial interest of an affected individual'.

(E) In paragraph (6)(C), as so redesignated, by inserting `, or member of the public,' after `Any Council member'.

(F) In paragraph (6), as so redesignated, by striking subparagraph (D) and redesignating subparagraphs (E) and (F) in order as subparagraphs (D) and (E).

(G) In paragraph (6)(D), as so redesignated--

(i) by striking `may not' and inserting `shall'; and

(ii) by inserting before the period the following: `, if the Secretary determines that the Council decision had an effect on the financial interest of an affected individual and the affected individual's vote decided the Council action'.

(H) By amending paragraph (6)(E), as so redesignated, to read as follows:

`(E) The Secretary, in consultation with the Councils and by not later than one year after the date of enactment of the Fisheries Management Reform Act of 2004, shall promulgate regulations that allow for the making of determinations under subparagraphs (B) and (C).'.

(2) CONFORMING AMENDMENT- Section 307(1)(O) (16 U.S.C. 1857(1)(O)) is amended by striking `302(j)(7)(A)' and inserting `307(j)(6)(A)'.

## **SEC. 5. REGIONAL SCIENCE AND TECHNICAL TEAMS.**

Section 302(g) (16 U.S.C. 1852(g)) is amended--

(1) by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following:

`(5) REGIONAL SCIENCE AND TECHNICAL TEAMS- (A) The Secretary shall establish regional science and technical teams to provide the Secretary with recommendations to carry out section 303(e).

`(B) Each science and technical team established under this paragraph shall consist of Federal, State, and academic qualified independent scientists.

`(C) Each science and technical team established under this paragraph shall--

(i) based on the best scientific information available, recommend to the Secretary--

(I) acceptable biological catch and bycatch limits, including annual limits, that are consistent with the national standard set forth in section 301(a)(1) and that consider predator-prey relationships and other ecological factors;





`(3) specific requirements necessary to protect species listed as endangered species or threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533).!.

*END*

## **ATTACHMENT B: Ecosystem-Based Management Legislative Language**

### **Subtitle A—Ecosystem-Based Fisheries Management Objectives**

#### **SEC. 211. PURPOSES AND POLICY.**

##### **(a) PURPOSES.—**

(1) IN GENERAL.—Subsection (b) of section 2 is amended by adding at the end the following new paragraphs:

“(8) to set as the principal objective of United States fishery policy in all ocean waters of the United States the protection, maintenance, and restoration of the health, integrity, productive capacity, and resilience of the marine ecosystems upon which long-term health and viability of fisheries depend and in cases of conflict between this objective and any other objective or in cases where information is uncertain or inconclusive, the principal ecological objective shall take precedence;

“(9) to set as the socioeconomic objective of United States fishery policy conserving and managing fisheries in order to support a diversity of fishing participants, methods and sectors, flexibility in managing fishing operations and implementing conservation changes, and resilience and adaptability in responding to changes in biological and economic conditions within the industry and fishing communities;

“(10) to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.”.

(2) CONFORMING AMENDMENTS.—Such subsection is further amended—

(A) in paragraph (6), by striking “and” at the end; and

(B) in paragraph (7), by striking the period at the end and inserting a semicolon.

(b) POLICY.—Subsection (c)(3) of section 2 is amended to read as follows:

“(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; incorporates and applies ecosystem principles; considers how fishing affects predator-prey and other important ecological relationships within marine ecosystems; draws upon Federal, State, and academic capabilities and the knowledge and experience of persons in the commercial and recreational fisheries in carrying out research, administration, management and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that minimize bycatch and avoid waste of fish; and is workable and effective;”.

#### **SEC. 212. DEFINITIONS.**

(a) CONSERVATION AND MANAGEMENT.—Paragraph (5) of section 3 (16 U.S.C. 1802) is amended to read as follows:

“(5) The term ‘conservation and management’ refers to all of the rules, regulations, conditions, methods, and other measures which are—

- “(A) required to rebuild, restore, or maintain, or which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment;
- “(B) in any case in which information is uncertain, unreliable, or inadequate, reduce risks by setting reference points for each stock of fish that take into account such uncertainty, unreliability, or inadequacy and the action to be taken if such a reference point is approached or exceeded;
- “(C) required to take into account the direct and indirect impacts of fishing on other species and their habitats and the conservation of those species and their habitats as important components of the ecosystem;
- “(D) required to allow the expansion of existing fisheries or the development of new fisheries after measures are in place to prevent adverse impacts on the stocks, associated species, and the ecosystem; and
- “(E) designed to assure that—
  - “(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;
  - “(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and
  - “(iii) there will be a multiplicity of options available with respect to future uses of these resources.”.

(b) OPTIMUM.—Paragraph (28) of section 3 is amended to read as follows:

“(28) The term ‘optimum’, with respect to the yield from a fishery, means the amount of fish which—species and their habitats and the conservation of those species and their habitats as important components of the ecosystem;

- “(A) will provide the greatest overall benefit to the Nation, particularly with respect to protection of marine ecosystems, food production, and recreational opportunities; and
- “(B) is prescribed as such on the basis of maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factors, including predator-prey and other important ecological relationships within marine ecosystems.”.

## **SEC. 213. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT.**

Section 301(a)(1) (16 U.S.C. 1851(a)(1)) is amended to read as follows:

“(1) Conservation and management measures shall protect the long-term health and viability of fisheries by protecting, maintaining, and restoring the health, integrity, productive capacity, resilience of the marine ecosystems upon which they depend and prevent overfishing, while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.”.

## **SEC. 214. CONTENTS OF FISHERY MANAGEMENT PLANS.**

(a) REQUIRED PROVISIONS.—

(1) ECOSYSTEM HEALTH AND STABILITY.—Section 303(a)(1)(A) (16 U.S.C. 1853(a)(1)(A)) is amended by striking “fishery;” and inserting “fishery and the marine ecosystem within which the fishery functions;”.

(2) (A) EFFECTS OF MANAGEMENT MEASURES.—Section 303(a) is amended by adding at the end the following new paragraph:

“(15) contain an assessment of the likely effects, if any, of the management measures of the plan on species other than species in such fishery, with emphasis on key interactions between predators and prey in the ecosystem for the purpose of determining if such measures are consistent with the appropriate Fisheries Ecosystem Plan prepared under section 305(j).”.

(B) TECHNICAL AMENDMENTS.—Section 17 303(a) is further amended—

(i) in paragraph (13), by striking “and” at the end; and

(ii) in paragraph (14), by striking the period at the end and inserting a semicolon and “and”.

(b) DISCRETIONARY PROVISIONS.—Section 24 303(b)(12) (16 U.S.C. 1853(b)(12)) is amended by striking “fishery.” and inserting “fishery or the marine ecosystem within which the fishery functions.”.

## **SEC. 215. FISHERIES ECOSYSTEM PLANS.**

Section 305 (16 U.S.C. 1855) is amended by adding at the end the following:

“(j) FISHERIES ECOSYSTEM PLANS.—

“(1)(A) Not later than 12 months after the date of enactment of this Act, the Secretary shall—

“(i) prepare, in conjunction with the Councils and other scientific, fisheries, and conservation interests as appropriate, and publish guidance for the development of Fisheries Ecosystem Plans; and

“(ii) provide such guidance to the Councils to facilitate development and implementation of the required Fisheries Ecosystem Plans within the prescribed time period.

“(B) The Secretary shall issue regulations that establish a process for preparing and developing Fisheries Ecosystem Plans that is consistent with the fishery management plan process outlined in section 304.

“(C) To assist in developing the guidelines and regulations, the Secretary shall—

“(i) conduct workshops with the Councils and other scientific, fisheries, and conservation interests; and

“(ii) identify the major marine ecosystems within each Council’s jurisdiction.

“(2)(A) Each Council shall, within 12 months after the publication of the guidance and regulations required by paragraph (1) and based on the best scientific information available, prepare and submit to the Secretary a Fisheries Ecosystem Plan for each major marine ecosystem within its jurisdiction.

“(B) In the case in which significant portions of a major ecosystem are in the jurisdictions of adjacent Councils, the Councils shall jointly prepare a plan for the major marine ecosystem.

“(3) Each Fisheries Ecosystem Plan shall—

“(A) contain information on the structure and function of the ecosystem in which fishing activities occur, including the geographic extent of the ecosystem and its biological, physical, and chemical dynamics, a description of the significant food web including key predator-prey relationships, and the habitat needs of different life stages of species that make up the significant food web;

“(B) establish indices of ecosystem health and integrity;

“(C) describe how the information on ecosystem structure and function is to be incorporated into the context of fishery-specific management plans;

“(D) include specific recommendations for implementing ecosystem protections in fishery management plans; and

“(E) outline long-term monitoring to evaluate changes in the ecosystem.

“(4) The Secretary shall review each Fisheries Ecosystem Plan according to the guidance prepared pursuant to paragraph (1) and approve or disapprove the plan, in whole or in part, according to the process described in section 304. If the Secretary disapproves or partially approves a plan, the Council shall revise and resubmit the plan not later than 6 months after its disapproval.

“(5) If, within the 18-month period after publication of the guidance and regulations required pursuant to paragraph (1), a Council fails to develop and submit to the Secretary a Fisheries Ecosystem Plan as required under this section, or if the Secretary disapproves in whole or in part such a plan, the Secretary shall prepare a plan for that ecosystem concerned within 24 months after the publication of the guidance and regulations required pursuant to paragraph (1).

“(6)(A) The Secretary may not approve a fisheries management plan or an amendment to such a plan, unless the Secretary determines that the fisheries management plan or an amendment is consistent with the principles, goals, policies, and recommendations of each relevant Fisheries Ecosystem Plan approved or prepared by the Secretary.

“(B) Not later than 30 months after the date the Secretary approves or prepares a final Fisheries Ecosystem Plan, each Council shall submit to the Secretary any fishery management plan or plan amendments required to make all fisheries management plans under its jurisdiction consistent with the principles, goals, policies, and recommendations of the Fisheries Ecosystem Plan. 19

“(C) If a Council fails to submit any fishery management plan or amendment required under subparagraph (A) before the end of the 30-month period beginning on the date of such approval, or if the Secretary disapproves in whole or in part such plan or amendment, the Secretary shall prepare such plan or amendment not later than 36 months after such approval.”.

#### **SEC. 216. AUTHORIZATION OF APPROPRIATIONS. 3**

There are authorized to be appropriated to the Secretary for the conservation of marine ecosystems under section 305(j), as added by section 215 of this Act—

- (1) \$15,000,000 for fiscal year 2006; 7
- (2) \$20,000,000 for fiscal year 2007; 8
- (3) \$25,000,000 for fiscal year 2008; 9
- (4) \$30,000,000 for fiscal year 2009; and 10
- (5) \$35,000,000 for fiscal year 2010.

**ATTACHMENT C: Fishing Quota Standards Act of 2003** (excerpted in relevant part)

**HR 2621 IH**

**SEC. 2. AMENDMENTS TO MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT.**

(a) IN GENERAL.—Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853) is amended—

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(2) in subsection (d)—

(A) by striking paragraph (5);

(B) by redesignating paragraphs (2) through (4) as paragraphs (7) through (9);

(C) by striking so much as precedes paragraph (7), as so redesignated, and inserting the following:

“(d) FISHING QUOTA SYSTEMS.—

“(1) IN GENERAL.—A fishery management plan or plan amendment that establishes a fishing quota system for a fishery after the date of the enactment of the Fishing Quota Standards Act of 2003 shall—

“(A) include management measures designed to ensure the sustainability of the fishery and provide additional and substantial conservation benefits to the fishery;

“(B) be effective for a period of a fixed duration, not to exceed 7 years;

“(C) provide for administration of the system by the Secretary in accordance with the terms of the plan;

“(D) establish procedures—

“(i) for the Council having authority over the fishery, or the Secretary in the case of a fishery management plan developed by the Secretary, to review the quota system at least 1 year prior to the end of the effective period of the plan; and

“(ii) for a review by the Secretarial Review Panel established under paragraph

(6) at least 6 months prior to the end of the effective period;

“(E) allocate, review, and limit or terminate quota shares in accordance with this subsection;

“(F) provide a fair and equitable process to appeal to the Secretary decisions made by a Council on—

“(i) eligibility to participate in all referenda authorized under this subsection and eligibility to receive an allocation of quota shares; and

“(ii) limitations, restrictions, and revocations of quota shares;

“(G) minimize, to the maximum extent practicable, negative social and economic impacts of the system on local coastal communities;

“(H) ensure adequate enforcement, management, and data collection, including the use of observers where appropriate at a level of coverage that yields statistically significant results; and

“(I) not require that quota shares be held

by a person engaged in personal-use fishing, including any recreational or subsistence fishing, if the fishery management plan designates a separate portion of the total allowable catch for personal-use fishing.

“(2) ALLOCATION OF QUOTA SHARES.—

“(A) IN GENERAL.—The Council having authority over the fishery shall make a fair and equitable allocation of all, or only a portion, of the total allowable catch limit as quota shares among existing categories of vessels and among fishing gear types or other appropriate qualifiers. In allocating quota shares for a fishery, the Council shall—

“(i) take into account present and historic participation in the fishery;

“(ii) ensure that each quota share is held only by persons who—

“(I) except for allocations under clause (iii), hold a permit to fish in the fishery; and  
“(II) are natural persons of the United States or permanent resident aliens qualified by Federal or State law to participate in the fishery;  
“(iii) establish procedures for allocating a portion of the annual harvest to allow new entrants into the fishery;  
“(iv) prevent any person from controlling an excessive share of fishing quotas issued for the fishery and establish any other limits or measures necessary to prevent inequitable concentration of quota shares and to prevent significant impacts on any person that holds a permit authorizing fishing in the fishery or the fishing community; and  
“(v) create incentives in successive allocations for fishermen who increase their gear selectivity and protection of essential fish habitat by increasing the allocation for those fishermen.

“(B) TRANSFER TO FAMILY MEMBERS.—

(i) The Secretary may allow the transfer of a quota share allocated under subparagraph (A), on a case-by-case basis, without regard to subparagraph (A)(ii)(I), from the holder of the quota share to a member of the holder’s immediate family, due to death or disablement of the holder.

“(ii) The Secretary shall establish a simple and expeditious process for such a transfer.

“(iii) The Secretary may allow such a transfer only within the same category of vessel, fishing gear type, or other appropriate qualifier to maintain a fair and equitable allocation of quota shares.

“(3) TERMINATION OR LIMITATION OF QUOTA SYSTEM OR QUOTA SHARES.—

“(A) TERMINATION OR LIMITATION OF QUOTA SYSTEM FOR CONSERVATION AND MANAGEMENT OF THE FISHERY.—A fishing quota system established for a fishery may be limited or terminated at any time if necessary for the conservation and management of the fishery, including if the quota system has been found to have jeopardized the sustainability of the stock or the safety of fishermen, by—

“(i) the Council that has authority over the fishery for which the system is established, through a fishery management plan or amendment;

“(ii) the Secretary, pursuant to section 304(h);

“(iii) the Secretary, in the case of any fishing quota system established by a fishery management plan developed or approved by the Secretary; or

“(iv) the Secretary, if the Secretarial Review Panel finds that the system is not meeting or exceeding the requirements of this Act, including, if applicable, the requirement under paragraph (1)(A) to provide additional and substantial conservation benefits, and the Council or Secretary does not make the changes recommended by the Secretarial Review Panel to ensure compliance with this subsection. This subparagraph does not diminish the authority of the Secretary under any other provision of this Act.

“(B) TERMINATION OR LIMITATION OF QUOTA SHARES.—A quota share issued under a fishing quota system established by a fishery management plan—

“(i) shall expire not later than 7 years after the date it is issued;

“(ii) shall be reviewed by the Council committee established in paragraph (5) not later than 6 months prior to expiration under clause (i); and

“(iii) shall be revoked, limited, or reallocated in accordance with the terms of the plan and regulations issued by the Secretary or the Council having authority over the fishery for which it is issued, if, based on a review by the committee established under paragraph (5), the quota shareholder is not meeting or exceeding the requirements of this Act or the conservation and management requirements of the fishery (including as a result of a violation of this Act or any regulation prescribed under this Act).

“(4) REFERENDUM PROCEDURE.—



“(A) IN GENERAL.—(i) A Council may submit a fishery management plan or plan amendment that establishes a fishing quota system only if the development and submission of such plan or plan amendment is approved in referenda conducted in accordance with this paragraph.

“(ii) The Secretary, in the case of a fishery management plan developed by the Secretary, may develop and approve a fishery management plan or plan amendment that establishes a fishing quota system only if the development and approval of such plan or plan amendment is approved in referenda conducted in accordance with this paragraph.

“(B) CONDUCT.—The Secretary shall conduct the referenda required under subparagraph (A). The Secretary shall develop guidelines to determine procedures for the referenda to conduct such referenda in a fair and equitable manner. Prior to the referenda, the Secretary shall identify and notify all persons who are eligible to vote in the referenda and make available to all such persons information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed fishing quota system.

“(C) REQUIRED VOTE.—Each referendum shall be decided by the affirmative vote of a two-thirds majority of the votes cast by the persons who the Secretary determines are eligible to vote in the referendum.

“(D) INITIAL REFERENDUM.—The Secretary shall conduct an initial referendum to determine support for proceeding with the development of a fishing quota system. Eligible voters shall be all persons who hold a permit to fish in the fishery subject to the proposed quota system.

“(E) SECOND REFERENDUM.—The Secretary shall conduct a second referendum to determine support for submitting a specific proposed fishing quota system for approval and implementation. Eligible voters shall be all persons who hold a permit to fish in the fishery or crew members who derive at least 75 percent of their income from the fishery subject to the proposed fishing quota system.

“(5) COUNCIL PROGRAM REVIEW COMMITTEE.—

“(A) IN GENERAL.—Each Council, upon deciding to develop a fishing quota program for a fishery, shall establish, maintain, and appoint members of a review committee to make recommendations for development, evaluation, and necessary changes to such programs to ensure that they meet the requirements of this subsection.

“(B) GUIDELINES FOR MEMBERS.—The Council, in consultation with the Secretary, shall develop guidelines that will ensure that committee members are qualified for appointment and are subject to conflict of interest rules. A member shall not vote on any decision pertaining to a fishing quota system under which the member holds a quota share or will hold a quota share in the subsequent 5-year period.

“(C) APPOINTMENTS.—The members of a review committee established by a Council under subparagraph (A) shall be made by the Council in such a manner as to provide fair representation to all groups affected by such programs, including, but not limited to, commercial, recreational, and subsistence fishing interests, fishing communities, scientists, and public interest groups including conservation organizations.

“(D) REVIEWS AND RECOMMENDATIONS REGARDING SYSTEMS.—Each review committee shall, every 7 years, review fishing quota systems, determine whether such systems meet the requirements of this Act, and evaluate whether each such system has improved management, conservation, and safety in the fishery. Pursuant to such review, the committee shall recommend any changes to a system necessary to ensure it meets those requirements and standards of improvement.

“(E) REVIEW OF FISHING QUOTA HOLDERS.—

(i) The review committee shall review compliance of fishing quota holders under a fishing quota system with the system and this Act at least once every 7 years, and may recommend that a quota share be limited, reduced, or revoked if the shareholder is not meeting such requirements.

“(ii) Reduced and revoked quota shares shall be reallocated through a mechanism approved by the Council. In the case of any such reallocation, preference shall be given to those quota shareholders that the review committee determines are providing additional and substantial conservation benefits to the fishery, or to new entrants in a fishing gear type or vessel category that, as a group, are providing additional and substantial conservation benefits to the fishery.

“(iii) Any recommendation for limitation, reduction, revocation, or reallocation of quota share is subject to appeal under the process established under paragraph (1)(F).

“(F) REPORTS.—The Council shall transmit to the Congress a report containing the results of each fishing quota system review within 90 days after the review is completed.

“(6) SECRETARIAL REVIEW PANEL.—

“(A) IN GENERAL.—Not later than 6 months after the date of the enactment of the Fishing Quota Standards Act of 2003, the Secretary shall establish a review panel—

“(i) to conduct reviews of fishing quota systems to determine whether such systems are meeting the requirements of this subsection;

“(ii) to provide the appropriate Council with recommendations on whether a fishing quota system should be renewed if it is meeting or exceeding the requirements of this Act, including, if applicable, the requirement under paragraph (1)(A) to provide additional and substantial conservation benefits, and if not, what modifications must be made to the system in order for it to be renewed; and

“(iii) to develop standards for the review of fishing quota shareholders by fishing quota review committees established under paragraph (5) by Councils.

“(B) MEMBERSHIP.—The review panel shall consist of—

“(i) the Secretary or a designee of the Secretary;

“(ii) the Commandant of the Coast Guard or a designee of the Commandant;

“(iii) a representative of each Council, selected by the Council from among its members; and

“(iv) 5 individuals with knowledge and experience in fisheries management.

“(C) VOTING.—(i) A member of the review panel that is a representative of a Council shall not vote on any decision pertaining to a fishing quota system for a fishery that is under the jurisdiction of the Council.

“(ii) A member of the review panel shall not vote on a decision pertaining to any fishing quota system under which the member holds a quota share or will hold a quota share in the subsequent 5-year period.

“(D) RECOMMENDATIONS.—Within 6 months after the date of its establishment, the review panel shall also, based on an evaluation of the fishing quota systems that were established prior to June 1, 1995, submit recommendations to the Secretary for the development of the regulations required under section 304(i). The review panel shall pay particular attention to—

“(i) the success of the systems in conserving and managing fisheries;

“(ii) the costs of implementing and enforcing the systems;

“(iii) the economic effects of the systems on local communities; and

“(iv) the methods used to establish or allocate quota shares.”; and

(D) by adding at the end the following:

“(10) DEFINITIONS.—For the purposes of this subsection—

“(A) the term ‘additional and substantial conservation benefits to the fishery’—

“(i) means scientifically measurable benefits to the fishery at the time of establishment of the system, that substantially—

“(I) avoid bycatch and minimize the mortality of unavoidable bycatch;

“(II) prevent highgrading;

“(III) reduce overfishing (including localized depletions) and rebuild overfished stocks; and

“(IV) protect essential fish habitat; or

“(ii) if it is not possible to directly measure conservation benefits, means actions taken by a fishing quota shareholder that are considered necessary to provide such benefits;

“(B) the term ‘excessive share’ means more than 1 percent of the total allowable catch in a fishery, except that a Council may increase such percentage—

“(i) to no more than 5 percent, if the Council can demonstrate that such an increase will not be detrimental to other individual fishing quota shareholders in the program; or

“(ii) to no more than 15 percent, if there are 20 or fewer participants in the fishery and the Council can demonstrate that such an increase will not be detrimental to other individual quota shareholders in the program; and

“(C) the term ‘fair and equitable allocation’ means initial or subsequent allocation of fishing quota shares based on multiple criteria that provide consideration for—

“(i) conservation performance, including the use of selective fishing practices that have minimal bycatch, prevent highgrading, and have minimal adverse impacts on essential fish habitat;

“(ii) owner-operators of fishing vessels; and

“(iii) long-term participation in the fishery.”.

(b) ACTION ON LIMITED ACCESS SYSTEMS.—Section 304 of such Act (16 U.S.C. 1854) is amended by striking subsection (d)(2)(B), and by adding at the end the following:

“(i) ACTION ON LIMITED ACCESS SYSTEMS.—In addition to the other requirements of this Act, the Secretary may not approve a fishery management plan that establishes a limited access system that provides for the allocation of fishing quotas (in this subsection referred to as a ‘fishing quota system’) unless the plan complies with section 303(d). Within 1 year after receipt of recommendations from the review panel established under section 303(d)(6), the Secretary shall issue regulations that establish requirements for establishing a fishing quota system. The regulations shall be developed in accordance with the recommendations of the review panel.

The regulations shall—

“(1) specify factors that shall be considered by a Council in determining whether a fishery should be managed under a fishing quota system;

“(2) ensure that any fishing quota system is consistent with the requirements of section 303(d), and require the collection of fees in accordance with subsection (d)(1) of this section;

“(3) provide for appropriate penalties for violations of regulations governing fishing quota systems, including the revocation of quota shares for such violations; and

(c) DEFINITIONS.—Section 3 of such Act (16 U.S.C. 1802) is amended by adding at the end the following:

“(48) The term ‘fishing quota system’ means any system that requires a user to acquire a Federal permit, which specifies by a unit or units a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person or a definable group of persons, to harvest fish in a fishery, during each fishing season for which the permission is granted, including area or community quotas, sector quotas, fishing cooperatives, and fishing quota programs.

“(49) The term ‘quota share’ means a Federal permit under a fishing quota system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that

may be received or held for exclusive use by a person or a definable group of persons, during each fishing season for which the permission is granted.”.